



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Assessing Penalties on Delinquent Debts Owed to
the Veterans Administration

File: B-222973

Date: June 8, 1987

DIGEST

Debts arising under Veterans Administration (VA) programs are not subject to late payment penalties, or any of the other charges prescribed by section 11 of the Debt Collection Act of 1982, 31 U.S.C. § 3717 (1982), since section 3717(g)(1) of that Act defers to previously enacted statutes that cover the same ground. Therefore, unless otherwise provided in the contract under which they arise, delinquent VA program debts may only be assessed the charges provided for under 38 U.S.C. § 3115 (1982).

DECISION

The General Counsel of the Veterans Administration (VA) has requested our opinion on whether, in view of the requirements of 38 U.S.C. § 3115 (1982), VA is required by 31 U.S.C. § 3717 (1982) to assess late payment penalties on delinquent debts which arise under VA programs. As explained below, we conclude that the penalty assessment provisions of section 3717 do not apply to VA program debts.

BACKGROUND

In 1982, the Congress enacted 31 U.S.C. § 3717 as section 11 of the Debt Collection Act of 1982 (DCA), Pub. L. No. 97-365, 96 Stat. 1749, 1755-56. According to its history, the DCA was intended to "put some teeth into Federal [debt] collection efforts" by giving the government "the tools it needs to collect these debts while safeguarding the legitimate rights of privacy and due process of debtors."^{1/}

Although federal agencies had long had authority to assess interest on delinquent debts under the common law, and the

^{1/} 128 Cong. Rec. S12328 (daily ed. Sept. 27, 1982) (statement of Sen. Percy). See also S. Rep. No. 378, 97th Cong., 2d Sess. 1-4 (1982); 64 Comp. Gen. 142, 143 (1984).

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GAO-Justice Department joint standards implementing the Federal Claims Collection Act of 1966 actually required that agencies do so, very few agencies were willing to use this tool. The legislative history of section 3717 shows a congressional intent to make the imposition of annual interest charges on delinquent debts mandatory.

However, the Congress was well aware that some agencies already had laws on the books that dealt with various aspects of debt collection. The Debt Collection Act of 1982 is replete with references to collection authority under this or "any other statutory authority." In each instance, the statute defers to the requirements of such other statutory authority. See, for example, the provisions for collecting claims through administrative offset, 31 U.S.C. § 3716(c)(2). Consistent with this policy, subsection 3717(g)(1) provides that section 3717 shall not apply "if a statute, regulation required by statute, loan agreement, or contract prohibits charging interest or assessing [these] charges or explicitly fixes the interest or charges [to be assessed] * * *".

Two years before the DCA was enacted, VA was given a specific statutory mandate to assess interest and administrative costs on VA program debts. Pub. L. No. 96-466, § 605, 94 Stat. 2171, 2210-11 (1980), codified at 38 U.S.C. § 3115. That law was enacted, in part, in response to GAO reports which had criticized VA, in particular, for failing to assess interest on debts owed to it in accordance with the FCCS.^{2/}

In pertinent part, 38 U.S.C. § 3115(a) states: "Notwithstanding any other provision of this title or of any other law * * * interest and administrative costs (as described in subsections (b) and (c) of this section) shall be charged, under regulations which the Administrator shall prescribe," on debts arising under VA programs. In this regard, sections 3717 of the Debt Collection Act, and 3115(a) are similar; they both mandate assessment of interest and administrative costs on delinquent debts. However, section 3717 imposes its requirements on all executive and legislative branch agencies, while section 3115 is addressed to the VA alone.

^{2/} E.g., 126 Cong. Rec. 24073 (Sept. 4, 1980) (remarks of Sen. Cranston) incorporating by ref. 126 Cong. Rec. 17079-80 (June 26, 1980) (discussion of provisions in S. 2885 which became section 3115). Cf. FCCS, 4 C.F.R. § 102.11 (1980).

The most significant difference between the two statutes is that the Debt Collection Act provides for a "minimum" rate of interest for the first 90 days that a debt is outstanding, after which the rate goes up substantially. A surcharge, called a "penalty charge," of up to 6 percent additional interest on any portion of the debt more than 90 days past due is then imposed on the debtor (unless these charges are waived pursuant to applicable regulations).

In contrast, subsection (b) of the VA statute starts interest running from the date of the initial notification to the debtor of the amount due to the United States (as does the Debt Collection Act) but allows the Administrator to waive interest if the debt is paid in "a reasonable amount of time" after the initial notification. The length of this grace period is to be determined by the Administrator. The amount of interest remains fixed for the entire period that the debt is outstanding. It is to be based on the rate of interest paid by the United States for its own borrowing, which is to be determined by the Administrator by regulation. There are no abrupt increases or "penalties" after 90 days or any other specific period of indebtedness.

After considering these statutes, VA concluded that because section 3115 specifically addresses VA program debts and makes no mention of penalty assessments, the more general provisions of section 3717--including its penalty provisions--do not apply to VA program debts. Subsequently, a GAO audit report^{3/} questioned VA's decision not to assess penalty charges on VA program debts pursuant to section 3717. This is the reason VA's General Counsel requested this opinion. His submission states that the assessment of penalties on VA program debts "would not be in accordance with" section 3115, and that a construction of section 3717 which mandated penalty assessments on VA debts would amount to repealing section 3115 by implication. Cf., e.g., Morton v. Mancari, 417 U.S. 535, 550-51 (1974).

DISCUSSION

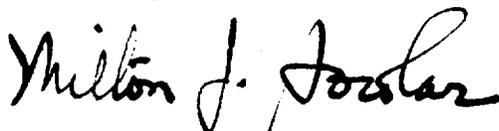
We agree with VA that 38 U.S.C. § 3115 is the governing statute, and that 31 U.S.C. § 3717 does not apply to VA program debts. As explained earlier, the provisions for interest and related charges in 31 U.S.C. § 3717 were intended to apply government-wide, but were not intended to supersede other specific statutory authorities already

^{3/} GAO, Debt Collection: Billions are Owed While Collection and Accounting Problems are Unresolved, AFMD-86-39, B-220243, May 23, 1986, at 108-09, 167-68.

enacted. In our view, the clear purpose of 31 U.S.C. § 3717(g)(1) is to defer to such other statutes, specific either to an agency or to a program, which address the assessment of interest and other related charges that stem from late payment. The fact that 31 U.S.C. § 3717 divides its late payment charges into three categories and labels them interest, administrative costs, and penalties, whereas the VA statute labels its late payment charges in only two categories, interest, and administrative costs, does not change the fact that when section 3717 was enacted, VA already had a statute dealing with late payment charges on VA program debts. Thus, we think that 38 U.S.C. § 3115 "preempted the field" with respect to late payment charges for VA program debts.

CONCLUSIONS

In our opinion, the VA statute, 38 U.S.C. § 3115, is the controlling statute for the assessment of interest and other related financial charges for VA program debts. This conclusion is based on the fact that section 3717 of the Debt Collection Act contains an explicit exemption from its scope for those debts which are subject to other, previously enacted statutes (such as section 3115), which cover the same territory. Since the VA statute prescribes all financial charges to be assessed against its debtors from the time the debt first accrues to the date of payment, there is no room for the application of different assessments under the Debt Collection Act. 31 U.S.C. § 3717(g)(1).



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